Nos. 80357-9 & 80366-8

SUPREME COURT OF THE STATE OF WASHINGTON

RAJVIR PANAG, on behalf of herself and all others similarly situated,
Respondent,

v.

FARMERS INSURANCE COMPANY OF WASHINGTON,
a foreign insurance company, and CREDIT CONTROL SERVICES,
INC., d/b/a Credit Collection Services, Petitioners

MICHAEL STEPHENS, on behalf of himself and
all others similarly situated, Respondent,

v.

OMNI INSURANCE COMPANY, a foreign insurance company, and
CREDIT CONTROL SERVICES, INC., d/b/a Credit Collection Services,
Petitioner

JOINT SUPPLEMENTAL BRIEF OF RESPONDENTS RAJVIR PANAG & MICHAEL STEPHENS

Matthew J. Ide, WSBA No. 26002
Attorney for Respondents

IDE LAW OFFICE
801 Second Avenue, Suite 1502
Seattle, Washington 98104-1500
Telephone: (206) 625-1326

Murray T. S. Lewis, WSBA No. 13307
LEWIS LAW FIRM
3412 S. Jackson Street
Seattle, WA 98144-2609
Telephone: (206) 223-7008

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I. IDENTITY OF RESPONDENTS

Rajvir Panag, as an individual and the proposed class action representative, plaintiff in the trial court, is the Respondent in Supreme Court Cause No. 80357-9. Michael Stephens, as an individual and the proposed class action representative, plaintiff in the trial court, is the Respondent in Supreme Court Cause No. 80366-8.

In the interest of judicial economy, Panag and Stephens file this single joint supplemental brief of respondents pursuant to RAP 13.7(d).

II. INTRODUCTION

The Supreme Court Commissioner's office identified the principal issue of this consolidated review as:

> Whether uninsured and underinsured motorists who were involved in accidents had standing to bring Consumer Protection Act claims against insurance companies and their collection agency in connection with the companies' efforts to collect on subrogation claims against the motorists.

While this supplemental brief therefore concentrates on the issue of "standing," respondents respectfully suggest that this framing of the question omits an important aspect of the factual underpinnings of these cases. Thus, to complete the issue presented, the following might be appended to the statement: "... when the insurance companies and the debt collection agency misrepresent, *inter alia*, the nature, amount – indeed, the very existence – of the purported obligation."

Even with this addition, however, the question thus stated is in truth too narrow. What is truly at issue here is much broader: Does the CPA protect members of the Washington public from businesses that have targeted them with an unfair or deceptive scheme to extract money from them that they do not actually owe?

III. SUPPLEMENTAL ARGUMENT

A. *Hangman Ridge* and the Five CPA Elements

More than twenty years ago, in *Hangman Ridge Training Stables, Inc. v. Safeco Title*, 105 Wn.2d 778, 719 P.2d 531 (1986), this Court detailed the five elements required for a viable Washington CPA claim. *See id.* at 778, 785, 787, 792. Five elements – no more, no less. In the more than two decades since that construction, the Legislature has not seen fit to amend the CPA in any manner designed to effect a change – either add to or subtract from – these five requisite elements. The Legislature's failure to amend the CPA for a prolonged period of time following this Court's 1986 judicial construction of it indicates legislative approval of that construction. *See Hangman Ridge*, 105 Wn.2d at 789 ("the Legislature, in the 10 years since we first construed the CPA in *Lightfoot v. MacDonald*, 86 Wn.2d 331, 544 P.2d 88 (1976) to require a public interest showing, has taken no action to eliminate such a requirement. We presume the Legislature is familiar with past judicial

interpretations of its enactments. [Citations omitted.] Legislative inaction in this instance indicates legislative approval ....").

These five well known elements are as follows: (1) an unfair or deceptive act or practice; (2) occurring in the conduct of trade or commerce; (3) that affects the public interest; (4) injury to plaintiff's business or property; and (5) causation. *See id.* at 778, 785, 787, 792. In the years since the *Hangman Ridge* opinion, if a plaintiff can establish these five elements, a viable CPA claim exists.

Despite the long standing, time-tested nature of *Hangman Ridge*, and its clarity and specificity, Farmers Insurance and their hired debt collection agency, CCS, ask this Court to create a new, sixth element: a requirement that there be a consumer transactional relationship between plaintiff and defendant. In other words, the defendants ask the Court to dramatically limit the scope of the CPA (and their accountability under it) to, in effect, consumer sales transactions.

The defendants, however, are in the wrong forum. What constitutes the requisite CPA elements was long ago settled by *Hangman Ridge*; if defendants wish that the law be changed, they must make their entreaties to the Legislature. And, to be clear, adding a consumer transaction standing requirement would be to effect a change in the existing law. This is so because *Hangman Ridge* contains not even a hint

that the Court actually had six CPA elements in mind, yet inexplicably identified only the well-known five. Of course, *Hangman Ridge* simply reflects – as it must – the actual language of the CPA. Thus, the clearest indication that adding this new element would effect a change in the law is the fact that the Act does not contain any such requirement. In short, such a requirement would contradict the CPA's dictate that "[a]ny person who is injured in his or her business or property by a violation of RCW § 19.86.020 ..." may bring suit. RCW § 19.86.090 (emphasis added).[1]

B. There Is No Requirement of a Transactional Relationship; the Required Relationship Is Simply Causally-Related Injury

The defendants argue that there must be a transactional relationship between the CPA plaintiff and the CPA defendant. This is incorrect. To begin with, there is nothing in the CPA to support such a requirement; indeed, to hold otherwise again goes against the

[1] For at least two reasons, we cannot simply presume that the use of the term "any person" in the CPA was careless. The first is that noted above – the fact that the Legislature has done nothing in the years since *Hangman Ridge* to limit the language. The second is that other statutes show that the Legislature knows how to be specific and limit the persons who can sue under an Act when it wants to (or, for that matter, the persons who may be sued). *See, e.g.*, RCW § 19.110.130 ("Any seller who violates any provision of this chapter is liable to the purchaser. The purchaser may sue ..."); RCW § 19.100.190(2) ("Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor ..."); RCW § 19.120.110 ("Any motor fuel retailer who is injured in his or her business ..."); RCW § 19.120.090(1) ("Any person who sells or offers to sell a motor fuel franchise in violation of this chapter shall be liable to the motor fuel retailer or motor fuel refiner-supplier ..."); RCW § 19.162.070 ("A person who suffers damage from a violation of this chapter may bring an action against an information provider...") (all emphases added).

straightforward "any person who is injured" language of the Act. *See* RCW § 19.86.090. *See also Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 312-13, 858 P.2d 1054 (1993) ("Although the consumer protection statutes of some states require that the injured person be the same person who purchased goods or services, there is no language in the Washington act which requires that a CPA plaintiff be the consumer of goods or services.") (Emphasis added). A recent Court of Appeals opinion again rejected the assertion that some form of privity is required:

> As a general rule, and as a matter of legislative intent, neither the CPA nor case law require privity of contract in order to bring a CPA claim alleging an unfair or deceptive act or practice. And on numerous occasions, our courts have rejected the argument that a contractual relationship must exist to sue under the CPA for an unfair or deceptive act or practice.

Holiday Resort Comm. Ass'n v. Echo Lake Assoc., LLC, 134 Wn. App. 210, 219-20, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007).

In truth, the only relationship necessary is the causal relationship between the unfair or deceptive conduct and the injury or damages sustained by the plaintiff. This is what the Act itself provides, *see* RCW § 19.86.090, and this is what relevant authority confirms:

> This court recently clarified when an act constitutes an unfair method of competition within the ambit of the Consumer Protection Act. In *Hangman Ridge* ... this court listed five requirements that must be met in order for a private party to establish a Consumer Protection Act violation. They are: (1) Is the action complained of an unfair or deceptive act or practice?

> (2) Did the action occur in the conduct of trade or commerce? (3) Is there a sufficient showing of public interest? (4) Was there injury in the plaintiff's business or property? and (5) Was there a causal link between the unfair acts and injury suffered?

Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 739, 733 P.2d 208 (1987) (citing *Hangman Ridge*, 105 Wn.2d at 780) (emphasis added). *See also Schmidt v. Cornerstone Investments*, 115 Wn.2d 148, 167, 795 P.2d 1143 (1990) ("Austin asserts that a causal link must exist between plaintiffs and himself in order to satisfy this part of the test. This is incorrect. Instead, the causal link must exist between the deceptive act ... and the injury suffered.") (emphasis added; citation omitted). *See also Indoor Billboard/Wash. Inc. v. Integra Tel. of Wash.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007) ("... and (5) a causal link between the unfair or deceptive act and the injury suffered") (citing *Hangman Ridge*, 105 Wn.2d at 784-85).

C. Although Not Required, Defendants Solicited Transactions Between Plaintiffs & Defendants

In their misguided efforts to have the Court create a new transactional relationship requirement, defendants do not ask for a rule requiring a completed transaction, only the solicitation of a potential transaction.[2] What defendants fail to recognize, however, is that they actively solicited and intended just such a transaction between them and

[2] Defendants undoubtedly realize that a requirement of a completed transaction is a non-starter, as it would carve out from the CPA all sorts of injurious, deceptive conduct that nevertheless stops short of a completed transaction.

the plaintiffs – the transfer of thousands of dollars from the plaintiffs to them. Indeed, the CCS Formal Collection Notice included the option of paying by credit card. Moreover, the evidence developed in the trial court established that for a large number of Washington residents (and members of the putative class), such transactions actually took place, totaling more than $1.5 million.

D. The CPA Is Not Limited to "Consumers"

Defendants have repeatedly asserted that the CPA is limited to "consumer" transactions. Trying to get extensive mileage out of the Act's "short title," they essentially argue that because the "C" in "CPA" stands for consumer, that must define the scope and reach of the Act. The argument, to say the least, lacks merit; short titles are not law.[3]

Furthermore, defendants' attempts to limit the entire CPA to "consumers" completely ignores that other express provisions of the Act are plainly geared to provide business competitors the right to seek relief under the CPA. *E.g.*, RCW § 19.86.020 & .050 (relief available for unfair methods of competition); RCW § 19.86.030 (restraints of trade); RCW §

[3] The statement that the Act "shall be known and designated as the 'Consumer Protection Act'" was in the original 1961 version of the CPA – when there was no private right of action for anybody (only enforcement by the Attorney General). *See* Laws of 1961, Ch. 216, § 19. This is further evidence that the Act has always been designed to protect the public in general, and that the Act's short title was never intended as a statement of who had standing to sue under it.

19.86.040 (monopolistic practices); RCW § 19.86.060 (acquisition of corporate stock by another corporation to lessen competition). If the analysis was as simplistic as defendants contend (*i.e.*, only "consumers" can sue), these other provisions would, at best, be contradictory.

Similarly, if defendants were correct, a department store could not obtain CPA relief against a trade name infringer, an airline could not obtain CPA relief against a ticket broker, and an insurance company could not obtain CPA relief against a chiropractor. Through previous cases, we know this is incorrect. *See Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 733 P.2d 208 (1987); *Northwest Airlines, Inc. v. Ticket Exchange, Inc.*, 793 F. Supp. 976 (W.D. Wash. 1992); *State Farm v. Hunyh*, 92 Wn. App. 454, 962 P.2d 854 (1998).

E. Reading the CPA as a Whole

Defendants have repeatedly argued that the CPA has to be read "as a whole," but fail do so themselves. The error starts with the claim that the Act's statement of purpose is found in the section listing the Act's short title (RCW § 19.86.910). The CPA's statement of "Purpose" however, is set out one section later, in RCW § 19.86.920.

That section, RCW § 19.86.920, very easily could have stated that the Act was designed to protect "consumers." But it does not so state; rather, the section explicitly states that the Act is designed to "protect the

public" from, *inter alia*, "unfair, deceptive, and fraudulent acts or practices." *See id.* (emphasis added) (as well as to "foster fair and honest competition"). This Court recently reiterated that point: "Private citizens act as private attorneys general in protecting the public's interest against unfair and deceptive acts and practices in trade and commerce." *See Scott v. Cingular Wireless*, 160 Wn.2d 843, 853, 161 P.3d 1000 (2007) (emphasis added) (citing *Lightfoot v. MacDonald*, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976)). In short, the language of the Act's provision pertaining to its purpose, scope and interpretation, cannot be reconciled with the defendants' contention that the CPA is a narrow sales fraud law.

Moreover, defendants' narrow reading of the CPA misses the real concern and purpose of the Act: the regulation of business activities. More specifically, the Act is concerned with prohibiting business activities and conduct that are injurious to the Washington public. That is why the CPA initially provides that all unfair methods of competition or unfair or deceptive conduct are unlawful. *See* RCW § 19.86.020 ("Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.") (emphasis added). *See also Holiday Resort*, 134 Wn. App. at 220 ("In the CPA, the legislature unequivocally states '[that such acts] are unlawful.'") (quoting RCW § 19.86.020).

This focus of the CPA on regulation of business activities is made even more clear by noting where in the Code the Act appears. It is not located in Title 62A Chapter 2 (concerning "Sales"); instead, it is located in Title 19, titled "Business regulations — miscellaneous." (Emphasis added.) In short, as with the other chapters in Title 19, the CPA's primary purpose is to regulate business activities (in this instance, by prohibiting harmful conduct).[4] Permitting those individuals who are targeted and harmed by the very activities the Legislature have deemed unlawful to seek relief (including prohibition on further unlawful conduct) helps effectuate that purpose.

F. California's *Camacho* Case Is Inapplicable, As Is Any Analytical Framework for "Unfairness"

Defendants have cited the California case *Camacho v. Automobile Club of Southern California*, 142 Cal. App. 4th 1394, 48 Cal. Rptr. 3d 770 (Cal. Ct. App. 2006). As the Court of Appeals below pointed out, however, the "focus of California's statute is 'unfair competition.'"

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[4] That the primary aim of the CPA is the regulation of business (using prohibition of certain wrongful acts and practices through private enforcement as a vehicle) is further supported by the 1983 amendments:

> This act may be cited as the antitrust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW.

Laws of 1983, Ch. 288, § 1 (emphasis added).

Stephens v. Omni Ins. Co., 138 Wn. App. 151, 169, 159 P.3d 10 (2007) (citation omitted). Thus, the *Camacho* court's analysis was concerned with determining whether the conduct at issue was "unfair" – not whether it was "deceptive." In conducting the "unfairness" analysis, the *Camacho* court looked to the analysis for "unfair competition" language in Section 5 of the Federal Trade Commission Act ("FTCA"). *See Camacho*, 142 Cal. App. 4th at 1400. Informed by "unfairness" analysis, the court concluded that Camacho could not "allege facts that constitute an unfair practice under section 17200." *See id.* (emphasis added).[5]

California Business &Professions Code § 17200 is a prohibition on "unfair competition." It is not a direct analogue to our RCW § 19.86.020, which prohibits both "unfair competition" and "unfair or deceptive acts or practices." *See Stephens*, 138 Wn. App. at 169 ("Our Consumer Protection Act more broadly attacks 'unfair or deceptive acts or practices in the conduct of any trade or commerce.'") (emphasis by court) (quoting RCW § 19.86.020). In short, because it necessarily focused on an

[5] *Camacho's* casual statement that it is not an injury to pay money you owe glosses over an important point: while driving without insurance might be unlawful, it does not mean that you are at fault for any accident that might occur. Moreover, even if you were proven to be at fault, it simply means you are liable for some amount – not some purported "amount due" unilaterally determined by an insurance company or debt collector.

"unfairness" analysis, *Camacho* is unhelpful here.[6] Under our CPA, "unfair" or "deceptive" are two distinct alternatives available to a CPA plaintiff, and this case involves the latter.

On that point, it is curious that defendants point to cases involving the unfairness analysis under the FTCA, even though the cases at bar involve deceptive conduct. Similar to our CPA, in addition to prohibiting unfair competition, the FTCA also prohibits deceptive conduct. *See* 15 U.S.C. § 45(a)(1) (declaring unlawful "unfair or deceptive acts or practices in or affecting commerce"). In other words, deceptive conduct provides a basis for relief separate and distinct from unfair conduct. For example, in *F.T.C. v. Verity International, Ltd.*, 443 F.3d 48 (2nd Cir. 2006), the FTC alleged in Count I of its complaint that the defendants engaged in a "deceptive act or practice" in violation of Section 5, while in

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[6] Notably, it appears that *Camacho* is not even the final word on "unfairness" under B&P 17200:

> California's unfair competition law, as it applies to consumer suits, is currently in flux. ...
>
> The California courts have not yet determined how to define 'unfair' in the consumer action context after *Cel-Tech*. In the First District Court of Appeals, the court extended the *Cel-Tech* definition to consumer cases. ... The Fourth District Court of Appeals initially proposed a test along the lines of *Cel-Tech* but later avoided the question by dismissing the claim under both the old and the new standard. ... The Second District Court of Appeals has issued two conflicting decisions, one applying the old balancing test, see ..., and another, issued during the same week, holding that *Cel-Tech* overruled all prior definitions of unfairness and created a new test, see *Camacho* ....

Lozano v. AT&T, 504 F.3d 718, 735-36 (9th Cir. 2007) (citations omitted; emphasis added).

Count II the FTC alleged that the defendants had committed an "unfair trade practice" in violation of the section. *Id.* at 63, 65. Liability was found and upheld on both counts. *See id.* at 65. *See also Orkin Exterminating Co. v. F.T.C.*, 849 F.2d 1354, 1367 (11th Cir. 1988) ("Furthermore, the [FTC] has explained in its Policy Statement that it operates under the assumption that the unfairness doctrine 'differs from, and supplements, the prohibition against consumer deception.'") (emphasis added; citations omitted).

Not surprisingly, just as with our CPA, the analysis for deceptiveness under the FTCA is altogether different from that for unfairness:

> To prove a deceptive act or practice under § 5(a)(1), the FTC must show three elements: "[1] a representation, omission, or practice, that [2] is likely to mislead consumers acting reasonably under the circumstances, and [3], the representation, omission, or practice is material." [Citation omitted.] The deception need not be made with intent to deceive; it is enough that the representations or practices were likely to mislead consumers acting reasonably. [Citation omitted.]

F.T.C. v. Verity, 443 F.3d at 63.

Washington has already established its analytical framework for the question of deceptiveness under the CPA, so we need not look at federal cases interpreting the FTCA for guidance. Even so, if we were to look for such guidance, however, we would look at cases involving the

question of deceptive conduct, not unfairness. Moreover, we would find that the analysis for deceptiveness under the FTCA is not all that different from our own.[7] *E.g., Hangman Ridge*, 105 Wn.2d at 785.

G. The Court of Appeals Opinion Does Not Infringe on the Pursuit of Legitimate Interests Via Legitimate Means

Defendants contend that the Court of Appeals opinion would prohibit any attempt to recover any sort of alleged obligation without first obtaining court adjudication. This alarmist argument rests on a mischaracterization of the opinion. The Court of Appeals made it clear that the lawful pursuit of rights claimed through subrogation is not affected. It is only the pursuit of those claimed rights through deceptive or

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[7] Interestingly, the deceptive conduct in the *Verity* case has some striking similarities to the debt collection scheme employed here, as it also played on the public's belief that a collection letter is only sent to you if you truly owe a debt, and that you must pay it or suffer the consequences of debt collection activity, such as harm to your credit:

> The FTC contends that the first element is satisfied by proof that the defendants-appellants caused telephone-line subscribers to receive explicit and implicit representations that they could not successfully avoid paying charges for adult entertainment that had been accessed over their phone lines — what we call a "representation of uncontestability." The district court found that during the AT & T period, the defendants-appellants caused charges for adult entertainment to appear on AT & T phone bills as telephone calls, thereby "capitaliz[ing] on the common and well-founded perception held by consumers that they must pay their telephone bills, irrespective of whether they made or authorized the calls." ... Upon reviewing the bills and call-center practices, we find that it was not clearly erroneous for the district court to find that they conveyed a representation of uncontestability. *See, e.g., Kemp v. AT & T Co.*, 393 F.3d 1354, 1360 (11th Cir. 2004) ("It was clearly foreseeable that this [phone-bill] formatting[, which listed information-service purchases as long-distance-telephone-call charges,] would cause some customers to think that . . . the charges had to be paid in order to maintain phone service.").

F.T.C. v. Verity, 443 F.3d at 63.

other unlawful means that are implicated – such as misrepresenting the nature or extent of the purported obligation (as occurred here). This is (or should be) nothing new to businesses operating in Washington. For example, in *Nordstrom*, 107 Wn.2d 735, 733 P.2d 208 (1987), the Court did not say that the coffee shop couldn't sell coffee – it merely said the shop could not use deception (by pretending it was related to Nordstrom) to do so. Likewise, in *Dwyer v. J.I. Kislak Mortgage Corp.*, 103 Wn. App. 542, 13 P.3d 240 (2000), *rev. denied*, 143 Wn.2d 1024 (2001), the Court did not prohibit the charging or collection of a fax fee, it merely prohibited the company from using deceptive means to do so. The Court of Appeals Opinion here is entirely consistent.

The defendants have continually pretended that "means" and "end" are one and the same. They are not. No matter how legitimate a desired "end" might be, any illegal means employed to achieve it are still illegal. Indeed, even in the realm of the collection of actual debts,[8] no matter how legitimately the debt is, there are myriad limitations on the means a collector can lawfully employ to try to collect it.

H. Defendants' Position Is Essentially That There Are No Limitations On Their Conduct In This Situation

Defendants claim that it makes no sense and, indeed, is contrary to

[8] Of course, neither Panag nor Stephens actually owed anything.

public policy to provide CPA protection for the plaintiffs and the others who received the fake debt collection notices. Since there is no real "debt," however, the laws specifically designed to prohibit, for example, the misrepresentation of the existence, nature or amount of an obligation[9] offer no protection here. Thus, defendants' position is in essence that there is no law that prohibits their conduct, which means that they are unencumbered by any meaningful restraints while pursuing their targets.

IV. CONCLUSION

Although the defendant insurers and debt collector pretend that they make legal arguments, in truth they do not. They cannot point to a single post *Hangman Ridge* case that holds that there are really six – not the established five – CPA elements. Similarly, they cannot point to anything in the language of the Act itself that limits its authority and operation to consumer sales transactions.[10] Instead, the defendants make what are essentially public policy arguments, but even these are, at best, suspect.

For example, defendants claim that this new limitation is necessary to prevent an expansion of CPA liability to unmanageable levels.[11] To

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[9] All things that the defendants did here.

[10] Other than the Act's short title which, as noted above, is legally meaningless.

[11] Ignoring for the moment that this case involves no expansion of liability; it merely asks

begin with, there are already a total of five hurdles for the CPA plaintiff, and failure to clear any one of them prevents the plaintiff from obtaining relief. Furthermore, this self-serving alarm rings particularly hollow, as it is the CPA defendant itself who is the initial gatekeeper for CPA liability: if the business refrains from conduct that is unfair or deceptive, no CPA liability will lie.

Defendants also contend that people who, for whatever reason, are found to be driving without proof of insurance should not receive protection from unfair or deceptive business activities.[12] But there is no public policy in Washington for the proposition that an individual who makes some mistake (whether it be driving without insurance, or being unable to pay actual, lawfully incurred debts) should be stripped of all protection from over-reaching businesses.[13] In fact, for those with lawfully incurred debts, for example, there is law (both federal and state) specifically designed to provide them with additional protections.

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the Court to confirm the law as it has stood since at least the *Hangman Ridge* decision.

[12] As far as a public policy argument, defendants have never actually explained how their fake debt collection scheme gets people to either forego driving or purchase motor vehicle liability insurance.

[13] Defendants could be hoist by their own petard. Because RCW § 19.86.020 declares that all deceptive acts are illegal ("unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful;" emphasis added), the defendants here are law breakers (just like the people who drive without insurance), and Washington has a strong public policy disfavoring such conduct. Thus, should defendants also be stripped of rights and protections they might otherwise enjoy under our laws?

Conversely, there are various public policy arguments for a ruling that confirms that the CPA is an available remedy in these circumstances. These include the strong interest in protecting the public against the sort of overly aggressive, over-reaching business antics that occurred here, especially considering that absent the CPA, the defendants believe they are wholly unrestricted in their conduct.[14] It also includes the strong interest in protecting lawful and honest businesses from suffering a competitive disadvantage to businesses that believe they are answerable to no one, and to whom deceit, misrepresentation and intimidation are just tools of the trade. In addition, it includes the fact that insurance companies are part and parcel of this scheme, and the public has a strong interest in seeing that all matters involving insurance are conducted with the highest regard for honesty, integrity and fair dealing.[15]

But these public policy arguments, as legitimate and compelling as they are, do not comprise the fundamental reason why the Court should

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[14] Imagine a tow company that went around improperly wheel locking cars, and then speciously told the owners that there was an "amount due" before the cars would be released. To make matters worse, the company puts fake parking infraction notices on the vehicles. Under the defendants' theory, since there is no consumer transaction or contractual relationship, this plainly unfair and deceptive practice would not fall within the purview of the CPA.

[15] *See* RCW § 48.01.030 ("The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.") (Emphasis added).

reject defendants' request to create a new, sixth CPA element. Rather, the Court should reject defendants' request because to create this new requirement would be contrary to the actual, plain language of the statute as enacted by the Legislature.[16]

In sum, the only "relationship" requirement for a CPA plaintiff is that provided in the CPA itself; it is a relationship of causation: the injury or damages plaintiff sustains must be causally related to the defendant's unfair or deceptive conduct. Nothing more is necessary to serve the intent and purposes of the broadly remedial CPA; nothing more is required by the language of the CPA.

May 1, 2008.

/s/ Matthew J. Ide, WSBA No. 26002

Matthew J. Ide, WSBA No. 26002
IDE LAW OFFICE
801 Second Avenue, Suite 1502
Seattle, Washington 98104-1500
Telephone: (206) 625-1326

Attorney for Rajvir Panag & Michael Stephens, as Plaintiffs/Respondents

Murray T. S. Lewis, WSBA No. 13307
LEWIS LAW FIRM
3412 S. Jackson Street
Seattle, WA 98144-2609
Telephone: (206) 223-7008

Plaintiffs'/Respondents' Co-Counsel

[16] As well as contrary to twenty-two year old precedent that the Legislature has not seen fit to change.

DECLARATION OF SERVICE

I certify that on May 1, 2008, I caused to be filed with the Supreme Court, via electronic filing, the foregoing Joint Supplemental Brief of Respondents Rajvir Panag & Michael Stephens, and caused to be sent, via first class mail, postage pre-paid, true and accurate copies to:

Stevan D. Phillips Rita Latsinova Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101-3197 *Attorneys for Petitioner Farmers Insurance Company of Washington*	John A. Granger Melissa O'Loughlin White Cozen O'Connor 1201 Third Avenue, Suite 5200 Seattle, Washington 98101 *Attorneys for Petitioner Credit Control Services, Inc.*
Jerret E. Sale Shawnmarie Yates Bullivant Houser Bailey PC 1601 Fifth Ave., Suite 2300 Seattle, WA 98101 *Attorneys for Omni Insurance Co.*	Philip A. Talmadge Talmadge Law Group PLLC 18010 Southcenter Parkway Tukwila, WA 98188-4630 *Attorneys for Petitioner Credit Control Services, Inc.*
Thomas Wolfe The Wolfe Firm 1200 Westlake Ave. N., Suite 809 Seattle, WA 98109-3590 *Attorneys for Amicus NASP*	John Woodring 2120 State Avenue NE #201 Olympia, WA 98506-6514 *Attorney for Amicus ACA Int'l*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Seattle, WA, this 1st day of May, 2008.

/s/ Matthew J. Ide, WSBA No. 26002
Matthew J. Ide